



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

SMC
Docket No: 03216-97
14 January 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: GYSGT [REDACTED], USMC [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 17Mar97 w/attachments
(2) HQMC PERB memo dtd 30Apr97
(3) BCNR ltr dtd 25Aug97
(4) Dir, SNCOA ltr dtd 15Sep97 w/encls and
first and second ends
(5) Memo for Record dtd 13Aug98
(6) BCNR ltrs dtd 18Dec98 and 24Jun99
(7) Dep Dir, Enl PME, Mar Corps Univ ltr dtd 23Nov99
(8) E-mail from Mr. [REDACTED] dtd 29Dec99
(9) BCNR case docket no. 05486-97
(10) Subject's naval record
(11) E-mail from Chairperson PERB dtd 11Jan00

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed written application, enclosure (1), with this Board requesting, in effect, that the applicable naval record be corrected by removing therefrom the fitness report for 9 January to 2 March 1995. A copy of this report is at Tab A.

2. The Board, consisting of Messrs. Lippolis and Swarens and Ms. Frye, initially reviewed Petitioner's allegations of error and injustice on 21 August 1997, and determined that additional information should be solicited. On both 12 August 1998 and 8 December 1999, the Board, then consisting of Messrs. Lippolis, Swarens and Leeman (Ms. Frye was no longer a member of the Board), again determined that additional information should be sought. This panel of the Board completed their deliberations on 11 January 2000. Pursuant to its regulations, the Board determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of enclosures (1) through (10), naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies which were available under existing law and regulations within the Department of the Navy.

b. The contested fitness report was presented to Petitioner while he was a student, in his current grade, at the Staff Noncommissioned Officer Academy (SNCOA) Advanced Course Class 2-95. The reporting senior, the Director, SNCOA, states that Petitioner involved himself with six other students in plagiarizing the Judge Advocate General Manual (JAGMAN) investigation evaluation, which resulted in disenrollment for all involved parties.

c. Petitioner believes that his dismissal from the course was unjust and that the Director, SNCOA violated applicable instructions by not allowing him five days to submit a statement of rebuttal to the contested report. He states he was notified on 2 March 1995, at 1030, that he would be dropped from the course and given an adverse fitness report. He says he was directed to check out by 1300 and complete a rebuttal statement regarding his drop from the course. He states this allowed him one day, rather than the five days to which he was entitled, to submit his rebuttal, since he was stationed outside the geographical area. Petitioner admits to having the same basic information on his investigation as another student, with some variations, but he does not consider this to be plagiarism or cheating, because during the entire course students were encouraged to work together. He further states that on other projects, students worked together and had "verbatim" information, and not once was any student counseled or dismissed for turning in the exact same information. He states his belief that the disenrollments "...had little to nothing to do with a JAG[MAN] investigation and everything to do with the fact that someone had to be made an example of and who better than 7 Black SNCOs." He provides supporting statements from other students in the class.

d. The reviewing officer commented that Petitioner is incorrect in contending that the students were allowed to work together, therefore, he did nothing wrong. The reviewing officer stated that the investigation submitted by Petitioner was so similar to that submitted by another student that it even had the other student's identification number on it, which brought the entire incident to light. The reviewing officer commented that Petitioner was required to submit his rebuttal to the contested fitness report before his departure to his home station; and although this requirement provided him less than the normal five days, it does not seem to have prevented him from submitting a thorough rebuttal. The reviewing officer felt that although this was an unfortunate incident, the Director used good judgment in his decision to disenroll Petitioner.

e. Enclosure (2) is the report of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) in Petitioner's case. The report reflects the PERB decision to deny Petitioner's request for removal of the contested fitness report. PERB stated they are not convinced that Petitioner's dismissal from the advanced course was either unfair or unjust; that they felt the reviewing officer addressed Petitioner's concern about having been provided less than the normal five days to prepare a rebuttal; and that no documentation furnished by Petitioner adds any matters not already completely addressed and resolved by the reviewing

officer.

f. In an effort to obtain the information the Board desired, the Board's staff sent the letter at enclosure (3) to the Director, SNCOA, requesting the following:

(1) Identify the six other students disenrolled from Advanced Course Class 2-95 for the same reason as Petitioner, and indicate their race.

(2) Identify any students who were dropped from Advanced Course Class 2-95 for other reasons, and indicate their race.

(3) Identify the members of Advanced Course Class 2-95 who were not disenrolled, and indicate their race.

(4) Indicate whether the reporting senior of record completed his full tour.

(5) Describe in detail the instructions given to students of Advanced Course Class 2-95 regarding the JAGMAN investigation exercise, including comment on the potential for misinterpretation in connection with copying the work of others.

(6) Provide, if available, copies of the JAGMAN investigation exercises submitted by Petitioner and the other students disenrolled from Advanced Course Class 2-95 for the same reason as Petitioner.

g. The Director's letter in response is at enclosure (4). The Director, a sergeant major, identified the six other students disenrolled for the same reason as Petitioner, indicating their race as "N." The Director identified only one other student who was dropped from the class for other reasons; and he included a roster of all members of the class who were not disenrolled, indicating their sex, ethnic background, and race. The Director stated that he, the reporting senior of record, assumed duties as the Director on 26 May 1993 and would relinquish those duties on 19 December 1997. The Director also submitted a statement from the gunnery sergeant class instructor, which had been previously submitted in response to an inquiry from Petitioner's parent command. The class instructor states that he told the whole class to work together and help each other out "only as far as the format is concerned." The instructor further states that he also advised the class that there was no reason to copy, being that there were approximately 145 plus findings of fact to be extracted from enclosures provided. He states he further advised the class of the possibility of coming up with the same findings of fact as someone else, but such findings should be written in the individual's own words. Commenting on the class instructor's statement, the Director stated it clearly indicates the guidance from the instructor was that students could assist each other in certain areas where format was concerned, and he added that an example of the "Format" was contained in student handout materials. The Director stated the intent was that assistance should be provided only by pointing out errors in format and spelling, and not by doing the actual work in preparation of the assignment. The Director asserted that the potential for

misinterpretation in connection with copying the work of others was negligible, considering that of the 105 JAGMAN investigation evaluations submitted by the students of Class 2-95, only the seven in question reflected plagiarism. The Director furnished copies of the JAGMAN investigation evaluations prepared by Petitioner and the other students disenrolled from the class for the same reason. The Director further stated the facts indicate that a gunnery sergeant originated the JAGMAN investigation evaluation and willingly provided his completed work, via computer disk, to the others individuals involved. He said a comparison of the seven assignments revealed they were essentially identical, to include punctuation and spelling errors. Finally, he reported that the similarity initially came to the attention of the instructor because the student number, 1-10, displayed in the standard subject identification code of Petitioner's JAGMAN investigation evaluation was in actuality the student number of another gunnery sergeant.

h. After receiving the information at enclosure (4), the Board deferred decision on 12 August 1998 to try to obtain the JAGMAN investigation evaluations of the students who were not disenrolled, and to give Mr. Swarens a chance to try to get input from HQMC personnel concerning the fairness of the disenrollments. The memorandum for the record at enclosure (5) shows the Board's staff contacted the Director of Records at the SNCOA requesting the evaluations of all members of Class 2-95, and was advised "'no files available, files are maintained for 2 years.'" Enclosure (5) further reflects that Mr. Leeman advised the Board's staff that the JAGMAN investigation exercise had been discontinued. By correspondence at enclosure (6), the Board's staff asked the President of the Marine Corps University for information on when and why the exercise had been discontinued. The response at enclosure (7), from the Deputy Director, Enlisted Professional Military Education, Marine Corps University, confirmed that the exercise had been discontinued at the SNCOA Advanced Course in 1996, but reported that they had no record as to why.

i. On 8 December 1999, the Board again deferred decision to enable [REDACTED] to try to obtain testimony from other members of Class 2-95.

j. By the E-mail at enclosure [REDACTED] reported his findings. He stated that 14 members of Class 2-95 had been contacted and asked to give a brief synopsis of the information provided to the class; that the 14 members polled all agreed that the instructions given were that they could work together to accomplish the task; that with the exception of a couple of the Marines polled, they were all basically surprised or shocked at the expulsion, inasmuch as it was not a graded event; that many believed the Director had overreacted to the situation; and that two acknowledged they had done exactly as those expelled, and that a closer review would have revealed that most students had done the same.

k. Enclosure (9) is the case of another member of Class 2-95, which the Board reviewed when they considered Petitioner's case.

l. Enclosure (10) is Petitioner's Official Military Personnel File.

4. After the Board had completed its deliberations on Petitioner's case, the Board's staff forwarded [REDACTED] E-mail at enclosure (8) to the Chairperson of the PERB for a ruling as to whether it warranted PERB reconsideration. By E-mail at enclosure (11), the Chairperson replied that PERB would not reconsider, expressing concern as to whether the class members contacted had provided letters (they had not).

CONCLUSION:

Upon review and consideration of all the evidence of record, and notwithstanding the contents of enclosure (2), the Board finds an injustice warranting removal of the contested fitness report.

Despite the reviewing officer's comments, the Board finds there was confusion as to what was permitted. In their view, the statement from the class instructor at enclosure (4) serves only to underscore this. The Board further feels that Petitioner was given too little time to prepare a rebuttal statement to the contested report, and that his disenrollment was too harsh under the circumstances. They consider the input of the other class members documented at enclosure (8) to be persuasive in supporting these findings.

In light of the above, the Board recommends the following corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing the following fitness report and related material:

Date of Report	Reporting Senior	Period From	of Report To
2Mar95	SgtM [REDACTED] USMC	9Jan95	2Mar95

b. That there be inserted in his naval record a memorandum in place of the removed report, containing appropriate identifying data concerning the report; that such memorandum state that the report has been removed by order of the Secretary of the Navy in accordance with the provisions of federal law and may not be made available to selection boards and other reviewing authorities; and that such boards may not conjecture or draw any inference as to the nature of the report.

c. That the magnetic tape maintained by Headquarters Marine Corps be corrected accordingly.

d. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

e. That any material directed to be removed from Petitioner's naval record be returned to this Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

5. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder

Jonathan S. Ruskin
JONATHAN S. RUSKIN
Acting Recorder

6. The foregoing report of the Board is submitted for your review and action.

W. Dean Pfeiffer
W. DEAN PFEIFFER

Reviewed and approved:

JAN 24 2000

Charles L. Tompkins

Charles L. Tompkins
Deputy Assistant Secretary of the Navy
(Personnel Programs)



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, DC 20380-1775

IN REPLY REFER TO:

1610

MMER/PERB

30 Apr 97

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF GUNNERY
SERGEANT [REDACTED] 1-04-8882, 1-04-8882, 1-04-8882

Ref: (a) Gy [REDACTED] Form 149 of 17 Mar 97
(b) MCO P1610.7C w/Ch 1-6

1. Per MCO 1610.11A, the Performance Evaluation Review Board, with three members present, met on 29 April 1997 to consider Gunnery Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 950109 to 950302 (TD) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner argues that his dismissal from the Staff Noncommissioned Officer Advanced Course was unjust and that the Course Director violated the provisions of reference (b) by not allowing him five days to submit his statement of rebuttal. To support his appeal, the petitioner provides statements from Gunnery Sergeant [REDACTED] and [REDACTED].

3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. Notwithstanding the four advocacy statements, the Board is not convinced or otherwise persuaded that the petitioner's dismissal from the Advanced Course was either unfair or unjust. In fact, we specifically note that the Reviewing Officer placed the entire situation into its proper perspective and clarified any misconceptions as to what was or was not authorized. We also observe that Lieutenant Colonel [REDACTED] addressed the petitioner's concern relative to being provided less than the normal five days to prepare a rebuttal. Nothing furnished with reference (a) adds any matters not already completely addressed and resolved by the Reviewing Officer. To this end, the Board finds the petitioner has failed to meet the burden of proof necessary to establish the existence of either an error or an injustice.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of Gunnery Sergeant [REDACTED] official military record.

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF GUNNERY
SERGEANT [REDACTED] MC

5. The case is forwarded for final action.

[REDACTED]
[REDACTED]
[REDACTED]
Chairperson, Performance
Evaluation Review Board
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps